



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,144	09/19/2003	Michael T. Carley	701879.4008	7207
22913	7590	09/19/2006		
WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			EXAMINER BACHMAN, LINDSEY MICHELE	
			ART UNIT 3734	PAPER NUMBER

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/667,144	Applicant(s) CARLEY ET AL.	
	Examiner Lindsey Bachman	Art Unit 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 19 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-22 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-22 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9-19-03, 6-21-04, 2-23-06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 21 is objected to because of the following informalities: 'they' is spelled 'the' in line 2. Appropriate correction is required.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: at least elements 118, 318, L1, L2 (Figure 2a). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because of the following informalities: Applicant has not enter serial number listed on page 34. Appropriate correction is required.

Claim Rejections - 35 USC § 102

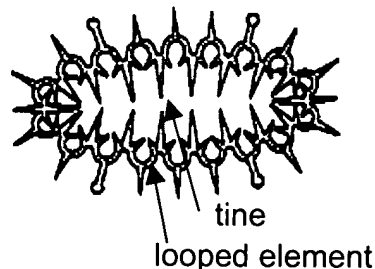
4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claim 17-19 is rejected under 35 U.S.C. 102(b) as being anticipated by Spence, et al. (US Patent 6,488,692).**

6. Spence'692 discloses a clip having a ring-shaped body (MR) defining a plane and disposed about a central axis (intersection of lines B-B and MLA in Figure 7), the body (MR) being movable from a planar configuration to a transverse configuration (column 8, lines 16-23). Further, the body (MR) contains a plurality of loop elements (see alternate embodiment in Figure 9b) and a plurality of tines (see labeled copy of Figure 9b below) extending from the looped elements towards the central axis. Further, Spence'692 teaches spring elements (82) that can be used to shape the clip (paragraph [0236]).



7. Regarding Claim 18, the spring element (82) taught by Spence'692 is biased to move the tips of the tines into the relaxed state.

8. Regarding Claim 19, Spence'692 discloses the looped elements (see Figure above) is a series of outer curved regions connected to one another and the tines (see Figure above) extend from the connection regions of the adjacent curved regions.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

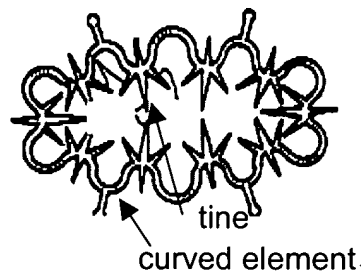
10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spence'692, in view of Loshakove, et al. (US Patent 6,726,704).

Art Unit: 3734

12. Regarding Claim 20, Spence'692 discloses a clip having a ring-shaped body (MR) defining a plane and disposed about a central axis (intersection of lines B-B and MLA in Figure 7), the body (MR) being movable from a planar configuration to a transverse configuration (column 8, lines 16-23). Further, the body (MR) contains a plurality of curved elements (see alternate embodiment in Figure 9c) and a plurality of arcuate tines (see labeled copy of Figure 9c below and arcuate features in element TB in Figure 8a) extending from the looped elements towards the central axis. Regarding Claim 20, Spence'692 does not teach arcuate tines.



13. Loshakove'704 teaches a clip that contains tines (210) which can be curved (column 5, lines 55-64) because this is a functional equivalent to the straight tines and the two types of tines can be used interchangeably. Further, curving spikes will keep them out of the same plane as the tabs (212) so that the clip can be maintained in the planar configuration (column 5, lines 41-50). Therefore it would have been obvious to one skilled in the art at the time the invention was made to use curved tines because they will aid in keeping the clip in a planar configuration.

14. **Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spence'692 and Loshakove'704, as applied to Claim 20, in further view of Gifford, et al. (US Patent 5,904,697).**

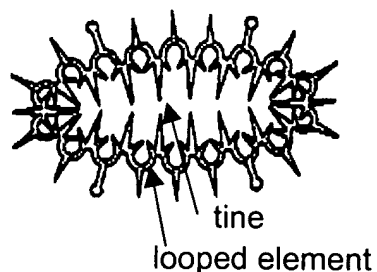
Art Unit: 3734

15. Spence'692 and Loshakove'704 teach the limitations of Claim 21 and 22, except for a spiral orientation of the arcuate tines.

16. Gifford'697 teaches a clip with a spiral orientation of tines (499) (see Figure 40a, 40b) because the spiral configuration allows the clip to be interlocked with another clip. The length of the tines is longer than the perimeter of the body because this length is necessary for interlocking. Therefore it would have been obvious to one skilled in the art at the time the invention was made to use a spiral configuration because it allows the clip to be interlocked with another clip.

17. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spence'692 and Loshakove'704 and Gifford'697.

18. Spence'692 discloses a clip having a ring-shaped body (MR) defining a plane and disposed about a central axis (intersection of lines B-B and MLA in Figure 7), the body (MR) being movable from a planar configuration to a transverse configuration (column 8, lines 16-23). Further, the body (MR) contains a plurality of loop elements (see alternate embodiment in Figure 9b) and a plurality of tines (see labeled copy of Figure 9b below) extending from the looped elements towards the central axis. Further, Spence'692 teaches a spring elements (82) that can be used to shape the clip (paragraph [0236]). Spence'692 does not teach arcuate tines.



Art Unit: 3734

19. Loshakove'704 teaches a clip that contains tines (210) which can be curved (column 5, lines 55-64) because this is a functional equivalent to the straight tines and the two types of tines can be used interchangeably. Further, curving spikes will keep them out of the same plane as the tabs (212) so that the clip can be maintained in the planar configuration (column 5, lines 41-50). Therefore it would have been obvious to one skilled in the art at the time the invention was made to use curved tines because they will aid in keeping the clip in a planar configuration.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Petersen, et al. (US Patent 6,152,937).

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lindsey Bachman whose telephone number is 571-272-6208. The examiner can normally be reached on Monday to Thursday 7:30 am to 5 pm, and alternating Fridays.

22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on 571-272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3734

23. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

lb



MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER